Filed 1/18/19 In re S.E. CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re S.E., a Person Coming Under the Juvenile Court Law.	B288100 (Los Angeles County Super. Ct. No. DK05766)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. M.M., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Stephen C. Marpet, Commissioner. Affirmed.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

M.M. (mother) appeals from the disposition order of the juvenile court removing her daughter S.E. (age 12) from her custody. (Welf. & Inst. Code, § 361, subd. (c).)[1] She contends that the juvenile court denied her due process because she was not given notice that the court would remove the child. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I. S.E.'s fragile medical condition

At the age of four, S.E. was diagnosed with severe, persistent asthma. She was a dependent of the juvenile court in 2014 because, among other things, mother did not seek timely medical treatment or regularly administer S.E.'s asthma medication.[2]

Notwithstanding mother's voluntary family maintenance program, the child was hospitalized multiple times at different facilities because of severe asthma. Each hospital prescribed assorted medications and told mother to take S.E. to a pulmonology specialist.

S.E. was hospitalized a fourth time in October 2016 for severe, persistent, poorly controlled asthma, environmental allergies and "*patient non-adherence*." (Italics added.) The

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[1] All further statutory references are to the Welfare and Institutions Code.

[2] The sustained petition on behalf of S.E. and her younger half sister, J.R., in 2014 included allegations of domestic violence between mother and S.E.'s father. The parents are now divorced.

Father also appealed from the disposition order. However, on October 3, 2018, this court dismissed his appeal as abandoned. (*In re Phoenix H.* (2009) 47 Cal.4th 835, 838.)

doctors again prescribed assorted medications and referred her to a pulmonologist. The hospital was concerned that mother was neglecting S.E.'s medical needs. The child would not have required hospitalization had she been under the care of a pulmonologist; mother had not purchased the prescribed medication; and she had no treatment plan.

In February 2017, mother claimed that S.E.'s pediatrician told her that a specialist was unnecessary. Also, mother expected S.E. to be hospitalized at least once a year because mother's sister had asthma and was often hospitalized. However, the Pediatric Intensive Care Unit social worker explained that it was up to the specialist to determine whether the child needed that care, and that she " 'can't imagine a doctor to do this with her [S.E.'s] severity of asthma. If [S.E.] is hospitalized again a referral will be made.' " Informed of this threat, mother agreed to take S.E. to a pulmonologist. Yet, by the end of April 2017, mother still had not made an appointment. She asserted she had difficulty arranging a visit to a primary care pediatrician to obtain Medi-Cal authorization for the specialist.

S.E. was again taken to the pediatric intensive care unit in May 2017 for asthma-related problems. This was her fifth hospitalization since the end of 2014. The hospital notified the Department that the child had still not seen a specialist and four of her asthma prescriptions were unfilled. Mother finally scheduled an appointment with a pulmonologist for July 17, 2017.

II. The petition and amended petition

On June 6, 2017, the juvenile court approved a warrant for S.E.'s detention from mother. The Department's application for detention explained that there was a "substantial danger to the

physical health of the child, [S.E.], due to multiple hospitalizations for asthma exacerbation" and mother's failure "to provide the child with the [prescribed] medication." The Department found that the risk to S.E. of further hospitalization and death was "high" without intervention. The Department noted mother's extensive history of referrals because of neglect, and physical and emotional abuse. Mother had a previous open case based on her inattentiveness to S.E.'s condition, and yet she continued to be inattentive and would not refill S.E.'s prescriptions.

However, the Department then reconsidered detention and determined that S.E.'s best interest would be served by leaving her in mother's care because the two were bonded, as long as mother administered the prescribed medication and scheduled and attended medical appointments. The Department filed a "non-detained" petition alleging S.E.'s medical condition, mother's failure to follow through with treatment and medication, and S.E.'s prior dependency because of mother's neglect of S.E. (§ 300, subd. (b).)[3]

At the detention hearing in late June 2017, the juvenile court released S.E. to mother and father, and ordered family maintenance services. The court admonished mother that "she must take the child before the next court hearing to an appropriate pulmonologist. *If the mother does not take the child to the pulmonologist by the 7-26-17 date the court will look into detaining the child from mother and . . . releas*[*ing the child*] *to the father.*" (Italics added.) The court authorized the

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[3] Neither of S.E.'s younger half siblings, J.R. (age 7) and C.G. (age 2), was named in the petition.

Department, the public health nurse, and the child's attorney to check on S.E.'s well-being.

III The eight months between detention and adjudication

In advance of the jurisdiction hearing originally scheduled for late July 2017, the Department filed an amended petition adding father as an offending parent. Also, the Department signaled it was considering moving the court for a change of order (§ 385) because it had become increasingly concerned that mother's unavailability to the social workers and the seriousness of the issues rendered the supervision plan ordered by the juvenile court no longer appropriate. In the meantime, it asked the juvenile court to "admonish[ ]" mother for not taking S.E. to a specialist and for denying the social workers access to mother's home. Mother even refused to speak to the social workers. Still, the Department recommended that S.E. be removed from *father's custody only*.

On July 26, 2017, the juvenile court made the following supervision orders for mother: (1) to attend an asthma education class; (2) to obtain an asthma case plan to give to S.E.'s school; (3) to join an asthma support group; (4) to ensure that a public health nurse sees S.E. twice a month to check on her medication; and (5) to bring S.E. to all medical appointments. The court cautioned mother to allow the Department and S.E.'s attorney to visit the child once a month to check on her well-being.

Mother was resistant to compliance. She failed to complete most of the court-ordered tasks by October 2017, although she met with the Public Health Nurse in November 2017, and took S.E. to see a pulmonologist in July and twice in September. She canceled S.E.'s December 2017 pulmonology appointment, but eventually rescheduled it for February 2018. The Department

again recommended that the court remove S.E. from father, while providing mother with family maintenance services.[4]

By mid-December 2017, six months after the detention hearing, the Department decided to consider a plan pursuant to section 360, subdivision (b), under which S.E. would remain with mother who would cooperate and work with the Department in an informal program of services, without court supervision.

Then in late December 2017, S.E. called an ambulance and sent herself to the hospital for asthma exacerbation. She had attempted to use her nebulizer, which prevents asthma attacks, but it was empty as mother had not filled it by the December 5, 2017 refill date. Mother "stop[ped] by" the hospital while S.E. was being transferred from the emergency room to the pediatric clinic, but told the nurse the next day that she felt sick and would not return. The public health nurse learned that mother was not following the prescription regimen and had not yet arranged for the school to have S.E.'s numerous medications on hand.

The Department sent notice of the adjudication/disposition hearing to mother at the address she identified. The notice stated that the social worker recommended "Home of Parent Mother." A copy of the social worker's report was attached.

IV. The adjudication and disposition hearing

Mother did not appear at the contested hearing on February 5, 2018. Her attorney requested a brief continuance to

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[4] The Department received a new referral in early November 2017 alleging that mother's boyfriend did cocaine in the children's presence. He also hit J.R., S.E.'s half sister, and mother inexplicably failed to intervene. That referral resulted in a new petition on behalf of S.E.'s siblings.

discuss with her the report of the most recent hospitalization. In denying the continuance request, the juvenile court noted that mother had both oral and written notice of the hearing and the case was eight months old. The court sustained the petition citing the most recent hospitalization as evidence that mother was "still not following up with the care and custody of this child's medical needs. So this is ongoing since June when this case first came in . . . and it's a pattern that is putting this child at severe risk of death, which is appalling to the court." (§ 300, subd. (b).)

Turning to the disposition, the court rejected the Department's recommendation to leave S.E. in mother's custody. The court found that mother had "a long history" of "avoid[ing]" taking care of S.E.'s medical needs. The "only reason" mother had complied with her plan at all was because the "Public Health Nurses have been all over this case." Finding "[t]he acts of this mother are egregious" and mother "has been neglecting this child on and off for years," so that returning S.E. to mother put the child at continued risk of harm, the court removed S.E. from mother's custody (§ 361, subd. (c)) and ordered family reunification services and monitored visitation.

Mother's attorney objected to the removal on the ground that the recommendation by the Department was to keep S.E. with mother and so no notice of an intent to remove the child was given. Counsel again requested a continuance to give mother and S.E. that notice. The court denied the request, noting mother had notice of the hearing and determination of the appropriate

disposition was the job of the court, not the Department. Mother filed her appeal.[5]

DISCUSSION

"Due process in the context of dependency law tends to focus on the right to a hearing, the right to notice and an opportunity to present objections. [Citations.] The parent in a dependency proceeding has a due process right to confront and cross-examine witnesses. [Citation.] 'The essence of due process is fairness in the procedure employed.' " (*In re Cole C.* (2009) 174 Cal.App.4th 900, 913.)

Mother contends that she was denied due process because "notice was non-existent." We disagree.

Mother admitted that she received both oral and written notice of the jurisdiction/disposition hearing. The written notice sent to mother was proper as it contained all of the information required by section 291. It provided the date, time, and location of the hearing. It advised mother that she had a right to be present, to be represented by an attorney, and to present evidence. It also notified mother that that the juvenile court could proceed in her absence. (§ 291, subd. (d).)[6]

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[5] The Department declined to file a responsive brief because it had not recommended the challenged order. It did request we take judicial notice of various rulings made since the removal order. We grant the request. (*In re Josiah Z.* (2005) 36 Cal.4th 664, 676.) However, nothing in that material affects our holding.

[6] Section 291, subdivision (d), pertaining to the jurisdiction and disposition hearings, provides that notices "shall include all of the following:

"(1) The name and address of the person notified.

Mother's real argument is that she was not notified that the juvenile court might reject the Department's recommendation and remove S.E. from her custody. But, while the notice stated that the *social worker's* recommendation was to leave S.E. in mother's custody, mother knew that the juvenile court was inclined to remove S.E. It had threatened her in open court with removal if she did not take S.E. to a specialist, and had already issued an order to detain the child.

More important, the written notice of the jurisdiction/disposition hearing to mother also stated, "[t]he court may proceed with this hearing whether or not you are present. At the hearing on the petition, the court may receive evidence

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"(2) The nature of the hearing.

"(3) Each section and subdivision under which the proceeding has been initiated.

"(4) The date, time, and place of the hearing.

"(5) The name of the child upon whose behalf the petition has been brought.

"(6) A statement that:

"(A) If they fail to appear, the court may proceed without them.

"(B) The child, parent . . . is entitled to have an attorney present at the hearing.

"(C) If the parent . . . is indigent and cannot afford an attorney, and desires to be represented by an attorney, the parent . . . shall promptly notify the clerk of the juvenile court.

"(D) If an attorney is appointed to represent the parent . . . the represented person shall be liable for all or a portion of the costs to the extent of his or her ability to pay.

"(E) The parent . . . may be liable for the costs of support of the child in any out-of-home placement.

"(7) A copy of the petition."

and determine whether the allegations are true. If any of the allegations are found true, *the court may proceed to disposition,* declare the child(ren) to be dependent child(ren) of the juvenile court, *remove custody from the parents* . . . and make orders regarding placement, visitation and services." (Italics added.) The notice additionally stated that "[e]ven if [the Department] does not recommend that reunification services be denied, the Court may still decide not to offer you reunification services." In short mother had actual notice that the court could remove S.E. from her custody, irrespective of the Department's recommendation.[7]

Moreover, mother has not established she was prejudiced beyond a reasonable doubt. Accordingly, we will not reverse. (*In re J.S.* (2017) 10 Cal.App.5th 1071, 1080–1081; *In re Justice P.* (2004) 123 Cal.App.4th 181, 193.) The juvenile court, who has the power to "make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child" (§ 362, subd. (a)), made the required findings under section 361, subdivision (c)(1) to remove S.E. The record amply supports the juvenile court's order and mother does not contend otherwise.

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[7] Mother was represented at the hearing. Her attorney asked for a continuance to notify mother and S.E. of the juvenile court's intention to remove S.E. The court denied that request. Mother does not challenge that ruling on appeal and we consider the contention to be forfeited. Nevertheless, continuances are disfavored in dependency proceedings, "particularly when they infringe on maximum time limits under the code." (*In re David H.* (2008) 165 Cal.App.4th 1626, 1635, citing § 352, subds. (a) & (b).) The detention hearing was in July and the jurisdiction hearing was being held seven months later. Under such circumstances, denial was not an abuse of discretion.

Further notice to mother that the court was considering removing S.E. would have had no effect on the result because no change in mother's behavior in the period between the notice and the hearing would have negated what had already occurred in the past 12 months. In short, it was the record before the court that led it to reject the Department's recommendation concerning disposition. We are convinced beyond a reasonable doubt that the result would have been the same even had mother been notified specifically that the juvenile court was considering removal. Accordingly, mother was not prejudiced by any failure of notice.

DISPOSITION

The order is affirmed.
NOT TO BE PUBLISHED.

DHANIDINA, J.

We concur:

LAVIN, Acting P. J.

EGERTON, J.